

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2016-018

Referral from

RCMP - Annapolis

July 4, 2016

John L. Scott
Interim Director
February 21, 2018

Facts:

On July 4, 2016, at approximately 2:45 a.m., SiRT received a call from the Annapolis County District Office of the RCMP. The call was in relation to the shooting of a male (referred to in this report as the Affected Person – AP) by two members of the RCMP (referred to as Subject Officer 1 (Officer 1) and Subject Officer 2 (Officer 2)). The shooting occurred in the small community of Hillsburn, located near Annapolis Royal, NS. As a result of the injury to the arms of AP, caused by being shot by Officers 1 and 2, SiRT began its investigation immediately. Due to a delay in receiving a Use of Force Report, the investigation was not concluded until December 1, 2017.

During the investigation, statements were taken from two witness police officers, numerous civilian witnesses, and emergency health personnel. In addition, the investigator received and reviewed the following:

- 911 and police radio transmission;
- traffic service report;
- forensic identification expert reports;
- use of force report;
- RCMP policies.

The Serious Incident Response Team Regulations made under the *Police Act* state that a Subject Officer does not have to give a statement, notes or reports to SiRT. In this case, Officer 1 and Officer 2, the Subject Officers, did not provide any information to the SiRT investigation.

On July 4, 2016, a 911 call was received by the operator about a motor home that was on fire in the community of Hillsburn, NS. The female caller, who was the owner of the motor home, also expressed concern that her home would catch fire as the motorhome was parked in the driveway and was near her house. A second 911 call, placed by a local resident, indicated that the male owner of the motorhome and residence saw the person who deliberately set the fire. Based on that information, the 911 operator involved the RCMP who patrol that area. The responding RCMP officers became aware of the suspected arsonist's name prior to arriving at the scene of the fire. The person responsible for setting the fire is the AP in this investigation.

As Officers 1 and 2 were travelling to the fire location in separate vehicles, another 911 call was made indicating that AP was at his home armed with a gun and may be suicidal. Both officers were aware that AP had prior dealings with the RCMP earlier in the day and was taken to the Valley Regional Hospital in Kentville to be assessed under the *Involuntary Psychiatric Treatment Act*.

AP was assessed at the hospital and released back into the community. Both responding officers, Officer 1 and Officer 2, were aware that AP had mental health issues.

Officer 2 arrived first at the fire scene and was waiting for the arrival of Officer 1 before travelling to the home of AP, which was approximately two kilometers further down the road. When the officers met up, they decided to get into one police vehicle and soon met up with a red Ford Focus vehicle operated by AP's cousin with his wife and a friend inside. These people told the officers that they had just seen AP driving a white truck (believed to be stolen from the owner of the motorhome) who was following their vehicle, but AP suddenly changed his direction down a side road. They also told Officer 1 and Officer 2 that they were with AP earlier that evening and he was talking in a bizarre fashion on a wide range of topics. In their opinion, AP was not in a proper state of mind and they were concerned what he might do in this condition.

After conversing with Officers 1 and 2, the red Ford Focus proceeded past the fire scene and continued down the road when suddenly the white truck appeared from a side road and came up behind them. Upon seeing this, Officers 1 and 2 got in their vehicle to proceed after the driver of the white truck (AP). Only a short distance down the road from the fire scene, the Ford Focus went into a horseshoe shaped driveway. The white truck followed very close behind within feet of the Ford vehicle. Officers 1 and 2 parked beside the driveway and got out of their vehicle. Officers 1 and 2 observed the close pursuit by AP on the Ford vehicle, looking at times as if he would ram into it. The officers were on foot in the driveway area yelling for AP to stop with their weapons drawn.

As this was going on, two members of the Annapolis Royal Police Department, called in to provide back-up for Officers 1 and 2, were arriving to observe the situation. These officers took a position behind Officers 1 and 2 closer to the highway with one of these officers having his gun drawn.

The verbal commands by Officers 1 and 2 for AP to stop and get out of the vehicle were not followed. In later statements to SiRT, the occupants of the Ford Focus said they feared for their safety due to how AP was dangerously operating the truck, worried that they would get run into at any moment by the much larger truck.

On a third or fourth trip around the driveway, AP altered his course and came right at Officers 1 and 2 who were standing on the grassy lawn area. The truck came right at both officers from a short distance away (approximately 20-30 feet). The two Annapolis Royal officers were behind Officers 1 and 2 and were retreating into a ditch or culvert between the grassy lawn and the roadway when the truck started towards the RCMP officers. Out of fear for their safety, the Annapolis Royal member with the firearm would have fired, but for Officers 1 and 2 being

between him and the white truck. Officer 1 armed with a shotgun and Officer 2 with his 9 mm Smith and Wesson opened fire on AP as he was closing the gap. Officer 1 fired a single shot blast with his firearm while Officer 2 emptied his clip with 15 shots fired. The shots occurred over a 3-4 second period. The truck came to a stop on the grassy lawn and AP exited the truck and went a short distance before falling near a small tree. All four police officers approach AP who was uncooperative and highly agitated.

An EHS ambulance was in the immediate area that night because of the fire scene nearby and was summoned over to the area to attend to AP's injuries. In fact, the female attendant with EHS observed the events in the driveway that night and in her opinion felt AP was trying to run over Officers 1 and 2 as he drove the truck right at them. AP suffered gunshot wounds to both arms and was taken by ambulance to Halifax for treatment.

SiRT investigators took many other statements from civilian witnesses at the driveway scene. These statements shared many similarities as to what took place in the driveway.

That day and days following, RCMP experts in forensics, accident re-construction, and firearms testing were called in to do their part of the investigation. The final report dealt with a Use of Force expert who makes assessments as to what maybe termed appropriate action in the circumstances.

On August 11, 2016, AP was found not criminally responsible for the following charges:

- 2 counts of attempted murder;
- 2 counts of assault with a weapon;
- dangerous driving;
- theft of a motor vehicle – truck;
- arson in relation to the motorhome and residence on Shore Road West.

All of these charges arose on the early morning of July 4, 2016.

AP was also found not criminally responsible for 2 counts of unsafe storage of a firearm occurring on July 3, 2016. These charges were laid in conjunction with taking AP to Valley Regional Hospital on the same date.

Relevant Legal Issues and Conclusions:

The first legal issue to be addressed is whether Officers 1 and 2 had the legal right to arrest AP. The second legal issue, accepting that the officers had the authority to arrest AP, was the force used by Officers 1 and 2 in arresting AP justified in the circumstances or was the force excessive

and not justified in these circumstances? If the force used was excessive, what legal consequences, criminal or internal, should be considered in these circumstances?

Was the Arrest Justified?

Officers 1 and 2 were more than justified in trying to apprehend and arrest AP. These officers were aware that he was identified as the person who set a deliberate fire on a motorhome and residence. Upon arriving in the area of the fire, they became aware that AP was driving a stolen vehicle. When officers 1 and 2 saw the stolen vehicle operated by AP, they observed a vehicle being operated in a dangerous fashion and putting civilian lives at risk.

Use of Force in Arresting A – Excessive or Justified?

In doing an analysis of what force was used to arrest AP by Officers 1 and 2, one must review all of the situational factors and the totality of the incident that took place that morning in Hillsburn, NS.

Background

When Officers 1 and 2 were called to attend the Hillsburn fire scene that night, what information did they possess? They knew it was a deliberately set fire that was destroying a motorhome and residence. The potential suspect (AP) in setting the fire was known to police having been arrested earlier that day for unsafe storage of firearms and was taken to the Valley Regional Hospital in Kentville by RCMP officers to be checked out under the *Involuntary Psychiatric Treatment Act* (IPTA). Whatever mental health issues were suspected, AP was discharged from the hospital and returned back to his local area. Besides the arson call, the 911 operator was telling Officers 1 and 2 that a second call came in saying AP was at his house and told people to stay away as he had a gun. With that knowledge, Officers 1 and 2 were radioing each other to make sure they put on their heavy body armour knowing the situation could be dangerous. Further information came to both Officers 1 and 2 that AP was acting and talking in a bizarre fashion and not in a “right frame of mind”.

Scene at Shore Road West Involving Police, White Truck and Red Ford Focus

Officers 1 and 2 followed the white truck to the horse-shoe shaped driveway on Shore Road West. There they observed a dangerous situation where the white truck, driven by AP, appeared to want to run into or ram the red Ford Focus with three occupants in it. The Ford Focus was doing its best to avoid being struck. Officers 1 and 2 appeared to try and prevent a collision from occurring by getting out and ordering AP to turn the truck off and get out. They repeated this many times and at one point were very close to the driver’s door. They were on foot, in uniform,

and both officers had their guns out. AP would not comply. The situation escalated when AP directed his truck at Officers 1 and 2 and the two Annapolis Royal police officers who were behind them. With the truck coming right at them from a short distance, they fired at the vehicle to stop the threat. The truck came to a stop and AP was arrested within seconds of exiting the vehicle. Officers 1 and 2 took the aggressive action obviously out of fear for their own life and safety, as well as others. Such action certainly appeared justified in the eyes of the two Annapolis Royal police officers and other witnesses at the scene. Statements obtained by SiRT investigators indicated that the lives of Officers 1 and 2 were in jeopardy.

One may consider that Officer 2, by emptying his clip and firing 15 shots at AP in the vehicle, used his weapon to an excessive degree. However, it would appear this truck was coming directly at them, moving quickly and one could not assume bullet 1, 2, 3, 4, etc would hit AP and the danger ceased to exist. These shots only took seconds to fire and Officer 2 reassessed the situation once the vehicle stopped.

Section 25(4)(d) of the Criminal Code of Canada provides a legal justification for a police officer to use force that could cause death or grievous bodily harm to a person to be arrested if the police officer using the force believes on reasonable and probable grounds that the force is necessary for the purpose of protecting the police officer...or any other person from imminent or future death by grievous bodily harm. This use of force by Officers 1 and 2 was justified in these circumstances and there is no basis for any criminal charges against Officers 1 and 2.

Further, I have reviewed the Operations Manual of the Royal Canadian Mounted Police, Chapter 4.7 Discharge of Firearms, and find that the actions of Officers 1 and 2 were justified and not contrary to any Sections outlined. Officers 1 and 2 were dealing with AP, who was suffering from a serious mental health disorder and operating a truck in an erratic and uncontrollable manner. These events unfolded on the spur of the moment and an ability to weigh and predict the actions of an irrational mind is a standard much too difficult to evaluate. Officers 1 and 2 were acting within the scope of their training and policy. Other than the vehicle driven by AP, there wasn't any person in the line of fire and as stated, the truck was closing the short distance towards the officers.

Conclusion:

Based on my reading of all the evidence brought to me by the SiRT investigative team, Officer 1 and Officer 2 took the necessary and appropriate action in the circumstances. Therefore, in my opinion, there are no grounds for any charges against Officer 1 or 2.